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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

9	SAN DIEGO CITY EMPLOYEES')	Case No. GIC841845
10	RETIREMENT SYSTEM, by and through its	)	[Consolidated with Cases No. GIC951286
	Board of Administration,	)	and GIC 852100]
11	Plaintiff,	)	CROSS-COMPLAINANT CITY OF SAN
12	v.	)	DIEGO'S FIFTH AMENDED
13	SAN DIEGO CITY ATTORNEY MICHAEL J.	)	CROSS-COMPLAINT FOR
14	AGUIRRE; THE CITY OF SAN DIEGO and	)	(1) DECLARATORY RELIEF
	DOES 1-100,	)	(COUNT ONE)
15	Defendants.	)	(2) DECLARATORY RELIEF
		)	(COUNT TWO)
		)	(3) WRIT OF MANDATE
		)	(4) VIOLATION OF GOVERNMENT
		)	CODE SECTION 1090 (COUNT ONE)
		)	(5) VIOLATION OF GOVERNMENT
		)	CODE SECTION 1090 (COUNT TWO)
17	CITY OF SAN DIEGO,	)	(6) DECLARATORY RELIEF
18		)	(COUNT FOUR)
19	Cross-Complainant,	)	(7) DECLARATORY RELIEF
		)	(COUNT FIVE)
20	v.	)	(8) BREACH OF FIDUCIARY DUTY
		)	(COUNT ONE)
21	SAN DIEGO CITY EMPLOYEES'	)	(9) BREACH OF FIDUCIARY DUTY
22	RETIREMENT SYSTEM, by and through its	)	(COUNT TWO)
23	Board of Administration; RON SAATHOFF;)	
24	JOHN TORRES; MARY VATTIMO; CATHY	)	I/C Judge: Hon. Jeffrey B. Barton
25	LEXIN; TERRI WEBSTER; SHARON	)	Dept.: 69
26	WILKINSON; JOHN TORELL in his capacity	)	Action filed: January 27, 2005
27	as City Auditor and Comptroller; AND ROES	)	TRIAL: October 6, 2006
28	1-50, inclusive,)	
	Cross-Defendants.)	

1 Cross-Complainant CITY OF SAN DIEGO ("City"), on behalf of the citizens of San
2 Diego, and other governmental interests, complains as follows:

3 **THE PARTIES**

4 1. Cross-Complainant City is a municipal corporation with all municipal powers,
5 functions, rights, privileges and immunities authorized by the Constitution and laws of the State
6 of California. As a "charter city" under Article IX, of the California Constitution, the City has
7 the power to make and enforce all ordinances and regulations with respect to municipal affairs.
8 Charter provisions have the effect of legislative enactments and charter city ordinances and
9 regulations regarding municipal affairs prevail over state laws covering the same issues.

10 2. The City of San Diego has an obligation to act in the public interest on behalf of
11 its residents and of current and future SDCERS beneficiaries to ensure that the City's
12 contributions are being made to an actuarially sound retirement system.

13 3. Cross-Defendant SDCERS is a public employee retirement system established
14 pursuant to Article IX, Section 141 of the Charter to provide retirement, disability, and death
15 benefits to its members. Pursuant to Charter Section 144, SDCERS is managed by a Board of
16 Administration (the "Board").

17 4. Pursuant to Charter Section 145, all monies contributed by City employees or
18 appropriated by the City Council are placed in a special fund in the City Treasury called the
19 "City Employees' Retirement Fund," a trust fund to be held and used solely for the purpose of
20 carrying out the provisions of Charter, Article IX. Monies in the trust fund may not be merged
21 with any other funds of the City. No payments may be made from the City Employees'
22 Retirement Fund except upon the Board's order.

23 5. California Constitution, Article XVI, Section 17 confirms that SDCERS' assets
24 are a trust fund. There is no trust or plan document, however, separate from the Municipal Code
25 provisions that govern the SDCERS fund.

26 6. Cross-Defendant RON SAATHOFF ("SAATHOFF") is a former Board Member
27 of SDCERS. SAATHOFF was a Board Member of SDCERS from on or before June 21, 1985

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1 until on or around March 18, 2005. SAATHOFF, at all relevant times to these proceedings, was
2 and is a resident of the County of San Diego, State of California.

3 7. Cross-Defendant JOHN TORRES ("TORRES") is a former Board Member of
4 SDCERS. TORRES was a Board Member of SDCERS from on or before June 17, 1995 until on
5 or around October 18, 2005. TORRES, at all relevant times to these proceedings, was and is a
6 resident of the County of San Diego, State of California.

7 8. Cross-Defendant MARY VATTIMO ("VATTIMO") is a former Board Member
8 of SDCERS. VATTIMO was a Board Member of SDCERS from on or before June 15, 2001 to
9 on or around December 17, 2004. VATTIMO, at all relevant times to these proceedings, was
10 and is a resident of the County of San Diego, State of California.

11 9. Cross-Defendant CATHY LEXIN ("LEXIN") is a former Board Member of
12 SDCERS. LEXIN was a Board Member of SDCERS from on or before January 19, 2001 until
13 on or around October 15, 2004. LEXIN, at all relevant times to these proceedings, was a
14 resident of the County of San Diego, State of California.

15 10. Cross-Defendant TERRI WEBSTER ("WEBSTER") is a former Board Member
16 of SDCERS. WEBSTER was a Board Member of SDCERS from on or before October 20, 1995
17 until February 18, 2005. WEBSTER, at all relevant times to these proceedings, was and is a
18 resident of the County of San Diego, State of California.

19 11. Cross-Defendant SHARON WILKINSON ("WILKINSON") is a former Board
20 Member of SDCERS. WILKINSON was a Board Member of SDCERS from on or before
21 March 21, 1992 until on or around March 18, 2005. WILKINSON, at all relevant times to these
22 proceedings, was a resident of the County of San Diego, State of California.

23 12. Cross-Defendant JOHN TORELL ("TORELL"), at all relevant times alleged in
24 this operative complaint, is the duly appointed Auditor and Comptroller for the City of San
25 Diego. Torell, at all relevant times to these proceedings, was a resident of the County of San
26 Diego, State of California.

27 13. Cross-Complainant is ignorant of the true names and capacities of Cross-
28 Defendants sued herein as ROES 1 through 50, inclusive, and therefore sue these Cross-

1 Defendants by such fictitious names. Cross-Complainant will seek to amend this cross-
2 complaint to allege the true names and capacities when so ascertained. Cross-Complainant is
3 informed and believes and thereon alleges that each of the fictitiously-named Cross-Defendants
4 is negligently or otherwise responsible in some manner for the occurrences alleged in the
5 Complaint, and that Cross-Complainant's damages herein alleged were proximately caused by
6 the above-mentioned negligence or other tortious conduct.

7 14. Cross-Complainant is informed and believe and thereon allege that, at all times
8 herein mentioned, each Cross-Defendant was an agent, servant and/or employee of each of the
9 other Cross-Defendants, and was acting within the course and scope of said agency,
10 representation and/or employment, and that their acts and deeds herein alleged were approved
11 and ratified by each and all of the other Cross-Defendants herein.

12 **THE CITY ATTORNEY'S AUTHORITY TO FILE THIS ACTION**

13 15. On August 2, 2005, the City Council authorized the City Attorney to prosecute a
14 cross-complaint for declaratory relief as to the legality of the pension benefits created under
15 certain agreements and related ordinances commonly referred to as MP I and MP II.

16 16. California Government Code section 54957.1 states in pertinent part:

17 The legislative body of any local agency shall publicly report any action taken in
18 closed session and the vote or abstention of every member present thereon, as
19 follows: . . . (2) Approval given to its legal counsel to defend, or seek or refrain
20 from seeking appellate review or relief, or to enter as an amicus curiae in any
21 form of litigation as the result of a consultation under Section 54957.9 shall be
22 reported in open session at the public meeting during which the closed session is
23 held. The report shall identify, if known, the adverse party or parties and the
24 substance of the litigation. In the case of approval given to initiate or intervene in
25 an action, the announcement need not identify the action, the defendants, or other
26 particulars, but shall specify that the direction to initiate or intervene in an action
27 has been given and that the action, the defendants, and the other particulars shall,
28 once formally commenced, be disclosed to any person upon inquiry, unless to do
so would jeopardize the agency's ability to effectuate service of process on one or
more unserved parties, or that to do so would jeopardize its ability to conclude
existing settlement negotiations to its advantage.

17 17. Pursuant to Section 54957.7(b) "After any closed session, the legislative body
26 shall reconvene into open session prior to adjournment and shall make any disclosures required
27 by Section 54957.1 of action taken in the closed session."

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1 18. Acting in accordance with the requirements set forth above, at the August 9, 2005
2 City Council meeting, former Assistant City Attorney Leslie J. Girard reported that "Last week
3 in closed session by a unanimous vote, the City Council authorized the City Attorney to pursue a
4 modified cross-complaint in the action SDCERS versus City of San Diego and City Attorney
5 Michael Aguirre."

6 19. Additionally, under San Diego City Charter section 40, the City Attorney has
7 independent authority to initiate and defend civil litigation. Section 40 of the San Diego City
8 Charter declares that "The City Attorney shall be the chief legal advisor of, and attorney for the
9 City and all Departments and offices thereof in matters relating to their official powers and
10 duties . . . ". Paragraph five of Section 40 states, in part:

11 It shall be the City Attorney's duty . . . to perform all services incident to the legal
12 department; to give advice in writing when so requested, to the Council, its
13 Committees, the Manager, the Commissions, or Directors of any department . . . ;
14 to prosecute or defend, as the case may be, all suits or cases to which the City
may be a party; [and] to prosecute for all offenses against the ordinances of the
City and for such offenses against the laws of the State as may be required of the
City attorney by law...

15 Paragraph five provides the City Attorney with broad authority, which is not limited by the need
16 for prior Council consent, to remedy alleged official wrongdoing

17 20. Furthermore, all public officers have an implied power to take all legal measures
18 in their official character which may be requisite to enable them to discharge the duty imposed
19 upon them by law, and therefore, if to accomplish their official duty it is necessary to sue, the
20 power to do so is implied. *See Watt v. Smith* (1891) 89 Cal. 602, 604.

21 21. The City Attorney is an elected public official. It is necessary for the City
22 Attorney to have the power to sue in order to accomplish his official duties because certain
23 members of the San Diego City Council have refused and continue to refuse to comply with
24 applicable law and to act in accordance with their fiduciary duties to the City. Specifically, these
25 City Council members have violated and continue to violate the liability limits law, the
26 prohibitions on self-dealing and the prohibition on personal conflicts, all of which were
27 concealed from the public.

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1 22. Certain members of the City Council have deviated and continue to deviate from
2 the City of San Diego's interest in so far as they have approved MP I and MP II. These actions
3 have caused the City to be in financial peril and resulted in the City to be unable to produce an
4 audited financial statement since 2002. These actions are inconsistent with the best lawful
5 interests of the City of San Diego.

6 23. The City Attorney has brought these matters to the attention of the highest City
7 authorities. Those parties have refused to act to protect the City from the consequences of their
8 actions such that their actions may be a violation of law reasonably imputable to the City, and
9 they are acting in a manner that is likely to result in substantial injury to the City. As a
10 consequence the City Attorney may and must take such actions as appear to be in the best lawful
11 interest of the City of San Diego. *See* Cal. Rules of Professional Conduct 3-600(B)
12 (Organization as Client).

13 **SDCERS' BOARD OF ADMINISTRATION**

14 24. California Constitution Article XVI, Section 17 provides that Boards of
15 Administration of public pension funds in the State of California have fiduciary responsibility for
16 the assets of the public pension funds over which they preside. Such Boards of Administration
17 are duty-bound to exercise the highest fiduciary duty to their members and to discharge their
18 fiduciary duty solely in the interest of and for the exclusive purpose of (1) providing benefits to
19 the retirement system participants and the beneficiaries, (2) minimizing employer contributions
20 thereto, and (3) defraying reasonable expenses of administering the retirement system.

21 25. Under Charter Section 143, the SDCERS Board is responsible for adopting and
22 approving the actuarial tables developed by SDCERS' actuary: the City's contributions are
23 determined based on these actuarial calculations. San Diego Municipal Code section 24.1111
24 requires that the City's contribution to the retirement fund be "an amount as determined by the
25 System's Actuary pursuant to the annual actuarial evaluation."

26 26. Charter Section 144 provides that the Board shall have exclusive control of
27 "investment of such fund or funds as may be established" in the retirement system and directs the

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1 Board, through its investment advisors and consultants, to invest, in the name of SDCERS,
2 monies held in trust by the city employee retirement fund.

3 **LIMITATIONS ON THE BOARD'S AUTHORITY TO ACT**

4 27. California Government Code section 1090 provides in relevant part: "[C]ity
5 officers or employees shall not be financially interested in any contract made by them in their
6 official capacity, or by any body or board of which they are members."

7 28. California Government Code section 1092 provides:

8 Every contract made in violation of any of the provisions of Section 1090 may be
9 avoided at the instance of any party except the officer interested therein. No such
10 contract may be avoided because of the interest of an officer therein unless such
contract in made in the official capacity of such officer, or by a board or body of
which he is a member.

11 29. San Diego Municipal Code section 27.3560 prohibits any City official, including
12 SDCERS trustees, from being financially interested in any contract made by them in their
13 official capacity.

14 30. California Constitution Article XVI, Section 18 provides in relevant part that no
15 city "... shall incur any indebtedness or liability in any manner or for any purpose exceeding in
16 any year the income and revenue provided for such year, without the assent of two-thirds of the
17 voters of the public entity voting at an election to be held for that purpose."

18 31. Charter Section 99 provides in relevant part: "The City shall not incur any
19 indebtedness or liability in any manner or for any purpose exceeding in any year the income and
20 revenue provided for such year. . ."

21 32. Charter Section 99 also provides:

22 No contract, agreement or obligation extending for a period of more than five
23 years may be authorized except by ordinance adopted by a two-thirds' majority
24 vote of the members elected to the Council after holding a public hearing which
has been duly noticed in the official City newspaper at least ten days in advance.

25 **MANAGER'S PROPOSAL I**

26 33. On or about January 21, 1996, SDCERS, through its Board, approved a
27 contribution deferral agreement, commonly referred to as Manager's Proposal I ("MP I"). As a
28 result of MP I, the City ended up contributing hundreds of millions of dollars less to the

1 SDCERS pension trust fund than was required by city and state law including, but not limited to,
2 the California Constitution, former Municipal Code section 24.0801 and Charter Section 143.

3 34. In conjunction with MP I, the San Diego City Council adopted implementing
4 ordinances that enhanced the retirement benefits of City employees, creating millions of dollars
5 of new pension benefits.

6 35. MP I specifically enhanced City employee retirement benefits by: 1) increasing the
7 formula for calculating the basic pension benefit, including an increase in the year multiplier
8 from 1.45% to 2.00% for general city employees; 2) agreeing to implement the Deferred
9 Retirement Option Plan (DROP); and 3) expanding the "purchase of service credit" under which
10 employees could buy "air time" and be treated, for retirement purposes, as having worked more
11 years than he or she actually had worked.

12 36. Former SDCERS Board members SAATHOFF, WEBSTER, TORRES, and
13 WILKINSON, all herein named as Cross-Defendants, had a substantial financial interest in the
14 retirement benefit enhancements set forth in MP I by virtue of the fact that they were also City
15 employees at all times relevant to this action.

16 37. On or about June 21, 1996 the SDCERS Board voted in favor of a motion to adopt
17 MP I. The motion passed.

18 38. At the time that the Board approved MP I, the Board knew or had reason to know
19 that MP I created a pension funding scheme that was not actuarially sound and was therefore
20 outside the scope of the Boards' authority.

21 39. In a July 16, 1996 memorandum, former SDCERS trustee John Casey complained
22 that MP I was severely flawed. He stated, "The proposal as submitted by the Manager (MP I),
23 i.e., a benefit increase for a reduction in actuarial rates, placed the Board in the position of
24 negotiator. I submit that the Board function is to administer the benefits granted by the Plan
25 Sponsor and not negotiate what the benefits should be with the Plan Sponsor. There is no
26 authority for the Board to engage in this activity."

27 40. The Board, including the Board members named as Cross-Defendants herein, made
28 no disclosure in the SDCERS annual reports or financial statements of the changes to its

1 retirement system resulting from MP I. Specifically, no mention was made that the City had
2 ceased contributing to SDCERS on an actuarially-determined basis but was instead contributing
3 on a basis of an agreement entered into between the Board members and the City as described in
4 MP I.

5 MANAGER'S PROPOSAL II

6 41. In 2002, SDCERS, through its Board, decided to enter into a second contribution
7 deferral contract with the City, commonly referred to as Manager's Proposal II ("MP II"). MP II
8 was an expansion of the MP I scheme detailed above. As with MP I, the purpose of the MP II
9 agreement was to provide the City with some relief from its contribution obligations.

10 42. As a part of the deal, the San Diego City Council agreed to adopt ordinances that
11 would enhance the retirement benefits of City employees and create millions of dollars of new
12 pension benefits.

13 43. MP II specifically enhanced City employee retirement benefits by: 1) increasing the
14 retirement factor from 2.25% to 2.5% for general members, retroactive through all years of
15 service; 2) creating an exception from the 90% "retirement allowance cap" for employees who
16 joined the City before their twenty-fourth birthday, which would directly benefit Cross-
17 Defendant Terri Webster; 3) creating a "Presidential Benefit" whereby presidents of the City's
18 four recognized labor unions could have their salaries earned while serving as union presidents
19 counted as though they were City salaries for the purposes of retirement. Additionally, City
20 Council Resolution (R-297335) specifically indemnified the SDCERS Board members for
21 approving MP II.

22 44. In addition to enhanced retirement benefits that reached all City employees, Cross-
23 Defendants herein SAATHOFF and WEBSTER were granted specific additional benefits that
24 enhanced their personal retirement and did not flow to all City employees. All such
25 consideration was contingent upon the Board's acceptance of MP II. In addition, all Board
26 members serving at that time were granted indemnity for their acts and/or omissions arising from
27 their service on the Board.

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1 45. Cross-Defendants herein SAATHOFF, WEBSTER, WILKINSON, VATTIMO,
2 LEXIN, and TORRES, and each of them, were City employees who had a substantial financial
3 interest in the retirement benefit enhancements described above—including financial interests
4 distinguishable from the interest of the public generally.

5 46. The Board had no legal duty to act with respect to MP II. In fact, by voting in
6 favor of MP II, the Board was operating outside of and in contravention to its mandate to provide
7 an actuarially sound system to SDCERS beneficiaries in violation of the California Constitution,
8 Charter Section 143, and former Municipal Code section 24.0801, and their mandate to avoid
9 conflicts of interest under Government Code 1090 et seq.

10 47. Under Municipal Code section 24.0907, the 13-member Board could have
11 discussed and taken action on MP II without the participation of the six Board members who
12 were financially interested in the enhanced retirement benefits provided under MP II.

13 48. On or about June 21, 2002, the Board passed a motion to agree in principal and/or
14 to enter into the formal written agreement that became known as MP II. The motion passed.

15 49. None of the financially interested former Board members disclosed his or her
16 potential financial interest or attempted to recuse him or herself from the Board's actions
17 regarding MP II.

18 50. The Board did not disclose in the SDCERS annual reports or financial statements
19 the changes to its retirement system resulting from MP II. Specifically, no mention was made
20 that the City had ceased contributing to SDCERS on an actuarially-determined basis but was
21 instead contributing on a basis of an agreement entered into between the Board members and the
22 City as described in MP II.

23 51. The SDCERS pension fund is currently at least \$1.7 billion underfunded at least in
24 part as a result of this scheme, which started in 1996 and continues to this day.

25 52. By offering to exchange and exchanging things of value as recited hereinabove,
26 SDCERS' Board members created an illegal and unenforceable contract.

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TOLLING OF THE STAUTE OF LIMITATIONS
(Govt. Code §§ 1090, 1092, MP I and MP II)

53. Cross-Defendants TORRES, SAATHOFF, WILKINSON, WEBSTER, VATTIMO, and LEXIN acted in concert with each other and conspired to engage in unlawful acts. These individual Cross-Defendants engaged in material and significant acts and continue to engage in material and significant acts in furtherance of the objectives of the conspiracy up to the present day. These individual Cross-Defendants intentionally concealed the factual basis underlying this action.

54. In order to conceal their illegal and improper acts which resulted in gross underfunding of SDCERS, Cross-Defendants TORRES, SAATHOFF, WILKINSON, WEBSTER, VATTIMO, and LEXIN, while acting as members of the Board of Administration of SDCERS adopted prolonged amortization schedules and used deceptive accounting practices, such as adopting a method for computing the unfunded liability (the PUC method), which allowed the City to under-report the amounts due from the City to the pension plan.

55. In order to further conceal their illegal and improper acts in connection with MP I and the injuries to the City resulting therefrom, Cross-Defendants TORRES, SAATHOFF, WILKINSON, WEBSTER, VATTIMO, and LEXIN, while acting as members of the Board of Administration of SDCERS, adopted MP II, which allowed the City to avoid the "balloon payment" required under MP I, which further concealed the detrimental effect of MP I upon the City and the retirement fund. The passing of MP II was an expansion of the MP I scheme which further lowered the trigger and therefore concealed the conspiracy engaged in by the individual Cross-Defendants, thus tolling MP I.

56. Cross-Defendants TORRES, SAATHOFF, WILKINSON, WEBSTER, VATTIMO, and LEXIN further conspired with one another to conceal that a special "Presidential Benefit" was given to incumbent union presidents under MP II, including Cross-defendant SAATHOFF. Notwithstanding that this "Presidential Benefit" was negotiated as part of the retirement benefit enhancements provided for under MP II, the provisions for the "Presidential Benefit" were omitted from the relevant labor agreements and implementing

ordinances. Instead, the incumbent union president benefits were implemented in separate agreements and ordinances, in order to conceal that these union presidents were receiving special additional benefits in exchange for their vote or influence to approve MP II.

57. The aforementioned unlawful actions did not come to light until a letter was sent by Diann Shipione to the Mayor and City Council dated November 18, 2002, urging a "No" vote on Items 50 and 51, which related to MP II. Shipione, a SDCERS Board Member and Trustee, raised four major concerns in her November 18, 2002 letter: (1) that the City asked to enter into an imprudent financing program; (2) that promising a city employee benefit conditioned upon a separate fiduciary's approval of an agreement to reduce already deficient City contributions to its pension plan is ethically questionable, if not blatantly corrupt; (3) that MP II failed to correct accounting irregularities; and (4) that MP II threatened the safety of the retirement system.

58. Cross-Defendant LEXIN, under the signature of then Assistant City Manager Lamont Ewell, on December 6, 2002, wrote a memorandum to the Mayor and City Council responding to each of Mrs. Shipione's concerns which falsely concluding that "there was nothing in the process that was either improper, irregular, or unlawful, and Ms. Shipione's comments are without merit." Cross-Defendant Lexin's memorandum further perpetuated the concealment of unlawful acts.

59. In September 2003, Diann Shipione notified city officials and underwriters of errors and omissions in City's financial statements dating back to 1996 and asserted that the errors falsely improved the City's financial condition and were done intentionally to misstate and hide the real condition of the pension system.

60. In February 2004, the City engaged an outside law firm, Vinson & Elkins (V&E), to conduct an investigation into the underlying facts identified as the possible basis for finding fraud or that illegal acts had been committed. Paul S. Maco, of V&E, in his initial letter to then City Attorney Casey Gwinn stated that their report would not be "an advocacy document, but an objective 'warts and all' report."

61. In April 2004 KPMG LLP's (KPMG) was hired by the City to audit the financial statements of the City as of and for the year ended June 30, 2003. KPMG made it clear that they

1 would be unable to issue their auditor's report on the City's basic financial statements until
2 V&E's Report was sufficiently completed. On several occasions, KPMG expressed its concern
3 about the scope of V&E investigation.

4 62. The V&E Report was issued on September 16, 2004. On October 11, 2004, KPMG
5 informed the City that they did not believe that V&E conducted an adequate investigation and
6 did not resolve key issues related to whether City officials and employees engaged in illegal or
7 fraudulent acts. KPMG found telling the fact that "Both the City and V&E have made it clear to
8 KPMG that V&E was not retained to investigate issues relating to the intent or whether any
9 individual's conduct violated any law, rule or regulation, and that the scope of its investigate
10 efforts were not designed to do so."

11 63. The hiring of V&E to prepare an inadequate report was another attempt to
12 perpetuate the conspiracy by Cross-defendants to conceal their unlawful acts.

13 64. KPMG noted, however that even the V&E Report acknowledges that the City's
14 prior SDCERS related disclosures were inadequate, its disclosure system was dysfunctional and
15 that a "minimalist approach to public disclosure" had been taken. KPMG further noted that the
16 V&E Report stated that "the City Auditor was disinclined to include information in the City
17 disclosure that reflected badly on the City and would sometimes excise negative statements from
18 disclosure documents."

19 65. Additionally, on March 5, 2003, SDCERS' outside counsel informed the SDCERS
20 Board that by adopting MP II they breached their fiduciary duty and recommended that the
21 Board exercise its right to nullify MP II to the extent required by its duties established under the
22 California Constitution. SDCERS' outside counsel further stated that by adopting MP II the
23 SDCERS Board subordinated SDCERS' interest to the interests of themselves, their unions, and
24 the City of San Diego. Despite these conclusions and recommendations by their own outside
25 counsel, the SDCERS Board, which at the time included Cross-Defendants TORRES,
26 SAATHOFF, WILKINSON, WEBSTER, VATTIMO, and LEXIN, chose to continue to conceal
27 the fact that they conspired to breach their fiduciary duty.

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1 FIRST CAUSE OF ACTION

2 **DECLARATORY RELIEF MP I**
3 **(Against SDCERS)**

4 66. Cross-Complainant incorporates by reference and realleges paragraphs 1 through
5 65 as though fully set forth herein.

6 67. An actual and justiciable controversy has arisen and now exists between Cross-
7 Complainant and Cross-Defendant SDCERS concerning their respective rights and duties in that
8 Cross-Complainant contends that MP I and all benefits granted thereunder are illegal and void
9 under Civil Code sections 1598 and 1667 because:

- 10 a. Its implementation violated and continues to violate Article XVI, Section 17, of
11 the California Constitution, which requires that the Board "shall administer the
12 system in a manner that will assure prompt delivery of benefits to the participants
13 and their beneficiaries."
14 b. Its implementation resulted in a pension deficit in violation of Article XVI,
15 Section 18 of the California Constitution and Charter Section 99, which provide
16 that the City shall not incur any indebtedness or liability in any manner or for any
17 purpose exceeding in any year the income and revenue provided for such year.
18 c. Its implementation resulted in enhanced pension benefits for certain Cross-
19 Defendants in violation of Government Code section 1090 and San Diego
20 Municipal Code section 27.3560, which prohibit city officers or employees from
21 being financially interested in any contract made by them in their official
22 capacity, or by any body or board of which they are members.

23 68. Whereas Cross-Defendant SDCERS contends that MP I is not illegal and void
24 under Civil Code sections 1598 and 1667 although:

- 25 a. Its implementation violated and continues to violate Article XVI, Section 17, of
26 the California Constitution, which requires that the Board "shall administer the
27 system in a manner that will assure prompt delivery of benefits to the participants
28 and their beneficiaries."

1 Municipal Code section 27.3560, which prohibit city officers or employees from
2 being financially interested in any contract made by them in their official
3 capacity, or by any body or board of which they are members.

4 71. Whereas Cross-Defendant contends that MP II is not illegal and void under Civil
5 Code sections 1598 and 1667 although:

- 6 a. Its implementation violated and continues to violate Article XVI, Section 17, of
7 the California Constitution, which requires that the Board members "shall
8 administer the system in a manner that will assure prompt delivery of benefits to
9 the participants and their beneficiaries."
10 b. Its implementation resulted in a pension deficit in violation of Article XVI,
11 Section 18 of the California Constitution and Charter Section 99, which provide
12 that the City shall not incur any indebtedness or liability in any manner or for any
13 purpose exceeding in any year the income and revenue provided for such year.
14 c. Its implementation resulted in enhanced pension benefits for certain Cross-
15 Defendant in violation of Government Code section 1090 and San Diego
16 Municipal Code section 27.3560, which prohibit city officers or employees from
17 being financially interested in any contract made by them in their official
18 capacity, or by any body or board of which they are members.

19 **THIRD CAUSE OF ACTION**

20 **WRIT OF MANDATE**
21 **(Against Cross-Defendants SDCERS and TORELL)**

22 72. Cross-Complainant incorporates by reference and realleges paragraphs 1 through
23 65 as though fully set forth herein.

24 73. Notwithstanding that MP I and MP II are illegal and void, as more fully detailed
25 above, Cross-Defendant SDCERS continues to issue warrants to the City Auditor and
26 Comptroller, Cross-Defendant Torell, for payment of the increased pension benefits illegally
27 created under MP I and MP II. Cross-Complainant has requested that SDCERS cease issuing

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1 said warrants for payments, which requests have been refused and/or ignored by said Cross-
2 Defendants.

3 74. The San Diego City Auditor at all times relevant to this action had an affirmative
4 duty to audit and allow the accounts of city officers. Under the terms of Govt. Code § 1094 the
5 San Diego City Auditor had a duty, before allowing such accounts, to require the SDCERS
6 officers to make and file with the San Diego City Auditor an affidavit or certificate under penalty
7 of perjury that the SDCERS officers had not violated Govt. Code § 1090. The SDCERS officers
8 did not provide and the San Diego City Auditor did not require the SDCERS officers to provide
9 the affidavit or certificate under penalty of perjury that the SDCERS officers had not violated
10 Govt. Code § 1090, as required under Govt. Code § 1094.

11 75. Despite the SDCERS officers not providing and the San Diego City Auditor not
12 requiring the SDCERS officers to provide the affidavit or certificate under penalty of perjury that
13 the SDCERS officers had not violated Govt. Code § 1090 the San Diego City Auditor allowed
14 the accounts of the SDCERS officers including the payments of pension benefits granted in
15 violation of Govt. Code § 1090.

16 76. The Cross-Complainant has requested the San Diego City Auditor to require the
17 SDCERS officers to stop paying any benefits created in violation of Govt. Code § 1094.

18 77. Cross-Complainant have further requested that the Board recalculate, or to direct
19 its agents and/or consultants to recalculate, proper pension benefit amounts, based solely upon
20 agreements which are valid and legal and which do not undermine the actuarial soundness of
21 SDCERS. Cross-Defendants have refused and/or ignored said requests.

22 78. Cross-Complainant has further requested that Cross-Defendant City Auditor and
23 Comptroller Torell refrain from making further payment of the increased pension benefits
24 illegally created under MP I and MP II and ignore any further warrants for said payments issued
25 by SDCERS. Cross-Defendant Torell refused to comply with these requests.

26 79. Unless SDCERS is enjoined from issuing any further warrant for payment of the
27 pension benefits illegally created under MP I and MP II and directed to recalculate proper
28 pension benefit amounts, based solely upon agreements which are valid and legal, and which do

1 not threaten the actuarial soundness of SDCERS, and unless Cross-Defendant Torell is enjoined
2 from making further payment of the increased pension benefits illegally created under MP I and
3 MP II, the City, its citizens and current and future SDCERS beneficiaries will suffer great and
4 irreparable injury in that the pension fund will continue to be depleted to such extent that funds
5 will not be available to pay legal benefits to future beneficiaries. The City and its citizens will
6 suffer further great and irreparable harm in that the City will remain unable to return to the bond
7 market for the cash infusion it needs to provide services for its citizens.

8 **FOURTH CAUSE OF ACTION**

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10 **VIOLATION OF GOVT. CODE §§ 1090, 1092 RE: MP I
(Against Cross-Defendants SAATHOFF, WEBSTER, TORRES and WILKINSON)**

11 80. Cross-complainant incorporates by reference and realleges paragraphs 1 through
12 65 as though fully set forth herein.

13 81. On June 21, 1996, when SDCERS voted to approve MP I, Cross-Defendants
14 SAATHOFF, WEBSTER, TORRES AND WILKINSON were City employees and members of
15 the Board of Trustees of SDCERS. As City employees, each had a prohibited financial interest
16 in MP I, which increased each of their personal retirement benefits.

17 82. Notwithstanding that each had a prohibited financial interest in MP I, Cross-
18 Defendants SAATHOFF, WEBSTER, TORRES and WILKINSON voted to approve MP I, thus
19 violating Government Code section 1090.

20 83. Notwithstanding that each of these Cross-defendants knew he or she had a
21 personal financial interest in MP I, these Cross-defendants did not disclose his or her financial
22 interest, thereby further concealing his or her illegal activity and the illegal activity of the others.

23 84. Pursuant to Government Code section 1092, because MP I was made in violation
24 of Government Code section 1090, MP I was void from its inception.

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1 FIFTH CAUSE OF ACTION

2 GOVT. CODE §§ 1090, 1092 RE: MP II
3 (Against Cross-Defendants SAATHOFF, WEBSTER,
4 TORRES, WILKINSON, LEXIN and VATTIMO)

5 85. Cross-complainant incorporates by reference and realleges paragraphs 1 through
6 65 as though fully set forth herein.

7 86. On or around November 15, 2002, when SDCERS voted to approve MP II,
8 Cross-Defendants SAATHOFF, WEBSTER, TORRES, WILKINSON, LEXIN and VATTIMO
9 were City employees and members of the Board of Trustees of SDCERS. As City employees,
10 each had a prohibited financial interest in MP II, which increased each of these Cross-
11 defendant's personal retirement benefits.

12 87. Notwithstanding that Cross-Defendants SAATHOFF, WEBSTER, TORRES,
13 WILKINSON, LEXIN, and VATTIMO had a prohibited financial interest in MP II, each of them
14 voted to approve MP II, thus violating Government Code section 1090.

15 88. Notwithstanding that each of these Cross-defendants knew he or she had a
16 personal financial interest in MP II, these Cross-defendants did not disclose his or her financial
17 interest, thereby further concealing his or her illegal activity and the illegal activity of the others.

18 89. Cross-defendant WEBSTER received special benefits from MP II which were
19 not given to all other City employees. Specifically, MP II created an exception to the 90 percent
20 cap on retirement benefits which is applicable to other City employees. This exception, referred
21 to as "Cap Waiver Benefit Interest", will allow WEBSTER to receive annual retirement
22 payments in excess of her highest year salary.

23 90. Furthermore, MP II included a "Presidential Benefit Interest" which directly and
24 specifically benefited Cross-Defendant SAATHOFF and was not given to other City employees.
25 The negotiated benefit allows Ron Saathoff's compensation as union president to be included in
26 the calculation for retirement benefits, dramatically increasing his retirement pay. Cross-
27 Defendant SAATHOFF personally lobbied the City Council for this special "Presidential

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Benefit", thereby acting to influence the City Council to vote on agreement in which he had a financial interest, in further violation of Government Code section 1090.

91. Pursuant to Government Code section 1092, because MP II was made in violation of Government Code section 1090, MP II was void from its inception.

SIXTH CAUSE OF ACTION

DECLARATORY RELIEF RE: MP I (Against Cross-Defendants SAATHOFF, WEBSTER, TORRES and WILKINSON)

92. Cross-Complainant incorporates by reference and realleges paragraphs 1 through 65 and the Fourth Cause of Action as though fully set forth herein.

93. An actual and justiciable controversy has arisen and now exists between Cross-Complainant and Cross-Defendants SAATHOFF, WEBSTER, WILKINSON and TORRES concerning their respective rights and duties under MP I in that Cross-Complainant contends that these Cross-defendants are not entitled to benefits granted to them under MP I and that Cross-complainant is not required to contribute money to SDCERS to pay for these benefits for these Cross-defendants because:

- a. Its implementation violated and continues to violate Article XVI, Section 17, of the California Constitution, which requires that the Board "shall administer the system in a manner that will assure prompt delivery of benefits to the participants and their beneficiaries."
- b. Its implementation resulted in a pension deficit in violation of Article XVI, Section 18 of the California Constitution and Charter Section 99, which provide that the City shall not incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year.
- c. MP I was approved in violation of Government Code section 1090 and San Diego Municipal Code section 27.3560, which prohibit city officers or employees from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.

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94. Whereas, SAAIHOFF, WEBSTER, WILKINSON and TORRES contend that they are entitled to increased retirement benefits pursuant to MP I and that Cross-complainant must contribute money to SDCERs to pay for these benefits although:

a. Its implementation violated and continues to violate Article XVI, Section 17, of the California Constitution, which requires that the Board “shall administer the system in a manner that will assure prompt delivery of benefits to the participants and their beneficiaries.”

b. Its implementation resulted in a pension deficit in violation of Article XVI, Section 18 of the California Constitution and Charter Section 99, which provide that the City shall not incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year.

c. MP I was approved in violation of Government Code section 1090 and San Diego Municipal Code section 27.3560, which prohibit city officers or employees from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.

SEVENTH CAUSE OF ACTION

DECLARATORY RELIEF RE: MP II
(Against CROSS-DEFENDANTS SAATHOFF, WEBSTER, TORRES,
WILKINSON, LEXIN and VATTIMO)

95. Cross-Complainant incorporates by reference and realleges paragraphs 1 through 65 and the Fifth Cause of Action as though fully set forth herein.

96. An actual and justiciable controversy has arisen and now exists between Cross-Complainant and Cross-Defendants SAATHOFF, WEBSTER, WILKINSON, VATTIMO, LEXIN and TORRES concerning their respective rights and duties under MP II in that Cross-Complainant contends that these Cross-defendants are not entitled to benefits granted to them under MP II and that Cross-complainant is not required to contribute money to SDCERS to pay for these benefits for these Cross-defendants because:

a. Its implementation violated and continues to violate Article XVI, Section 17, of the California Constitution, which requires that the Board “shall administer the system

- 1 in a manner that will assure prompt delivery of benefits to the participants and their
2 beneficiaries.”
- 3 b. Its implementation resulted in a pension deficit in violation of Article XVI, Section
4 18 of the California Constitution and Charter Section 99, which provide that the
5 City shall not incur any indebtedness or liability in any manner or for any purpose
6 exceeding in any year the income and revenue provided for such year.
- 7 c. MP II was approved in violation of Government Code section 1090 and San Diego
8 Municipal Code section 27.3560, which prohibit city officers or employees from
9 being financially interested in any contract made by them in their official capacity,
10 or by any body or board of which they are members.
- 11 97. Whereas, SAATHOFF, WEBSTER, WILKINSON, VATTIMO, LEXIN and
12 TORRES contend that they are entitled to increased retirement benefits pursuant to MP II and
13 that Cross-complainant must contribute money to SDCERs to pay for these benefits although:
- 14 a. Its implementation violated and continues to violate Article XVI, Section 17, of the
15 California Constitution, which requires that the Board “shall administer the system
16 in a manner that will assure prompt delivery of benefits to the participants and their
17 beneficiaries.”
- 18 b. Its implementation resulted in a pension deficit in violation of Article XVI, Section
19 18 of the California Constitution and Charter Section 99, which provide that the
20 City shall not incur any indebtedness or liability in any manner or for any purpose
21 exceeding in any year the income and revenue provided for such year.
- 22 c. MP II was approved in violation of Government Code section 1090 and San Diego
23 Municipal Code section 27.3560, which prohibit city officers or employees from
24 being financially interested in any contract made by them in their official capacity,
25 or by any body or board of which they are members.
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1 **EIGHTH CAUSE OF ACTION**

2 **BREACH OF FIDUCIARY DUTY RE: MP I**
3 **(Against Individual Cross-Defendants SAATHOFF,**
4 **WEBSTER, TORRES and WILKINSON)**

5 98. Cross-Complainant incorporates by reference and realleges paragraphs 1 through
6 65 and the Fourth Cause of Action as though fully set forth herein.

7 99. At all times relevant hereto, each of the individual Cross-Defendants herein named
8 was a public official who owed fiduciary duties to Cross-complainant to discharge the
9 obligations of his or her position with integrity and fidelity. Cross-defendants fiduciary duties
10 included a duty of undivided loyalty, and a duty to disclose all information relevant to the well-
11 being of Cross-complainant.

12 100. Each of these Cross-defendants breached his or her fiduciary duty to Cross-
13 complainant by voting in favor of MP I in order to gain personal advantage to the detriment of
14 Cross-complainant and in violation of Government Code section 1090.

15 101. Each of these Cross-defendants further breached his or her fiduciary duty to Cross-
16 complainant by failing to disclose and/or by concealing the fact that MP I would have a
17 detrimental effect upon Cross-complainant in that MP I would increase Cross-complainant's
18 liabilities to SDCERS and would result in an actuarially unsound retirement system.

19 102. Each of these Cross-defendants further breached his or her fiduciary duty to Cross-
20 complainant in that they adopted prolonged amortization schedules for the unfunded liability and
21 used deceptive accounting practices to conceal from Cross-complainant MP I's detrimental
22 effect upon Cross-complainant. Cross-Defendants made no disclosure in the SDCERS annual
23 reports or financial statements of the changes to the Retirement System resulting from MP I.
24 Specifically, no mention was made that the City had ceased contributing on an actuarially-
25 determined basis but was instead contributing on the basis of an agreement entered into between
26 the Board members and the City as described in MP I.

27 103. Additionally, these Cross-defendants had specific fiduciary obligations under San
28 Diego City Charter section 143 and Article XVI, Section 17 of the California Constitution.

1 California Constitution Article XVI, Section 17(b) states that "[t]he members of the retirement
2 board of a public pension system shall discharge their duties with respect to the system solely in
3 the interest of . . . minimizing employer contributions thereto"

4 104. Each of these Cross-defendants breached the fiduciary obligations imposed upon
5 him or her by California Constitution Article XVI, Section 17(b) by approving MP I even though
6 they knew that MP I would result in an enormous unfunded liability and, therefore, drastically
7 increase the City's required contributions in subsequent years.

8 105. As a result of the individual Cross-Defendants' breach of their fiduciary duties by
9 voting to adopt MP I, Cross-complainant was damaged in that MP I drastically increased
10 SDCERS' unfunded liabilities and caused the retirement system to be actuarially unsound.
11 Cross-complainant now faces vastly increased financial exposure for said unfunded liabilities
12 and interest thereon and is now required to contribute far more money to the retirement system
13 than would have been required but for MP I.

14 106. As a further result of the individual Cross-defendants' breaches of their fiduciary
15 duties by concealing the increased liabilities to Cross-complainant resulting from MP I, Cross-
16 complainant has been damaged in that it has been and continues to be subject to investigations by
17 the Securities and Exchange Commission, the Internal Revenue Service, the United States
18 Attorney's Office and the San Diego District Attorney's Office.

19 107. Cross-complainant has been damaged in that Cross-complainant has suffered a
20 downgrading of its credit rating and, as a result, is unable to issue municipal bonds at a favorable
21 rate, if at all.

22 108. Further, Cross-complainant has incurred and will continue to incur significant
23 costs to respond to and/or defend against the aforementioned investigations and take required
24 action to restore its credit rating.

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1 NINTH CAUSE OF ACTION

2 **BREACH OF FIDCUARY DUTY RE: MP II**
3 **(Against Cross-Defendants SAATHOFF, WEBSTER,**
4 **TORRES, WILKINSON, LEXIN and VATTIMO)**

5 109. Cross-Complainant incorporates by reference and realleges paragraphs 1 through
6 65 and the Fifth and Eighth Causes of Action as though fully set forth herein.

7 110. Each of the Cross-defendants herein named breached his or her fiduciary duty to
8 Cross-complainant by voting in favor of MP II in order to gain personal advantage to the
9 detriment of Cross-complainant and in violation of Government Code section 1090.

10 111. Each of these Cross-defendants further breached his or her fiduciary duty to Cross-
11 complainant by failing to disclose and/or by concealing the fact that MP II would have a
12 detrimental effect upon Cross-complainant in that MP I would increase Cross-complainant's
13 liabilities to SDCERS and would result in an actuarially unsound retirement system.

14 112. Each of these Cross-defendants further breached his or her fiduciary duty to Cross-
15 complainant in that MP I was designed to and did conceal the detrimental effect of MPI upon
16 Cross-complainant.

17 113. Cross-Defendants made no disclosure in the SDCERS annual reports or financial
18 statements of the changes to the Retirement System resulting from MP II. Specifically, no
19 mention was made that the City was continuing not to contribute to SDCERS on an actuarially-
20 determined basis but was instead contributing on the basis of an agreement entered into between
21 the Board members and the City as described in MP II.

22 114. Cross-Defendants TORRES, SAATHOFF, WILKINSON, WEBSTER,
23 VATTIMO, and LEXIN further breached their fiduciary duties in that conspired with one
24 another to conceal that a special "Presidential Benefit" was given to incumbent union presidents
25 under MP II, including Cross-defendant SAATHOFF.

26 115. Additionally, these Cross-defendants had specific fiduciary obligations under San
27 Diego City Charter section 143 and Article XVI, Section 17 of the California Constitution.
28 California Constitution Article XVI, Section 17(b) states that "[t]he members of the retirement

1 board of a public pension system shall discharge their duties with respect to the system solely in
2 the interest of . . . minimizing employer contributions thereto”

3 116. Each of these Cross-defendants breached the fiduciary obligations imposed upon
4 him or her by California Constitution Article XVI, Section 17(b) by approving MP II even
5 though they knew that MP II would result in an enormous unfunded liability and, therefore,
6 drastically increase the City’s required contributions in subsequent years.

7 117. As a result of the individual Cross-Defendants’ breach of their fiduciary duties by
8 voting to adopt MP II, Cross-complainant was damaged in that MP II drastically increased
9 SDCERS’ unfunded liabilities and caused the retirement system to be actuarially unsound.
10 Cross-complainant now faces vastly increased financial exposure for said unfunded liabilities
11 and interest thereon and is now required to contribute far more money to the retirement system
12 than would have been required but for MP II.

13 118. As a further result of the individual Cross-defendants’ breaches of their fiduciary
14 duties by concealing the increased liabilities to Cross-complainant resulting from MP II, Cross-
15 complainant has been damaged in that it has been and continues to be subject to investigations by
16 the Securities and Exchange Commission, the Internal Revenue Service, the United States
17 Attorney’s Office and the San Diego District Attorney’s Office.

18 119. Cross-complainant has been damaged in that Cross-complainant has suffered a
19 downgrading of its credit rating and, as a result, is unable to issue municipal bonds at a favorable
20 rate, if at all.

21 120. Further, Cross-complainant has incurred and will continue to incur significant costs
22 to respond to and/or defend against the aforementioned investigations and take required action to
23 restore its credit rating.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Cross-Complainant prays judgment against Cross-Defendants and each
26 of them as follows:

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1 being financially interested in any contract made by them in their official capacity, or by
2 any body or board of which they are members.

3 **UPON THE THIRD CAUSE OF ACTION FOR WRIT OF MANDATE**

4 1. For a writ of prohibitory mandate enjoining SDCERS and/or its Board, agents,
5 and/or employees from issuing any further warrant for payment of pension benefits illegally
6 created under MP I and/or MP II;

7 2. For a writ of prohibitory mandate enjoining Cross-Defendant Torrell from making
8 any further payments of increased pension benefits illegally created under MP I and/or MP II;

9 3. For a writ of mandate directing SDCERS and/or its Board, agents and/or
10 employees to recalculate proper pension benefit amounts, based solely upon agreements which
11 are valid and legal, and which do not threaten the actuarial soundness of SDCERS, and to issue
12 warrants for payment in accordance therewith.

13 **UPON THE FOURTH CAUSE OF ACTION**

14 1. For a judicial determination that MP I was created in violation of Government
15 Code section 1090 and that Cross-defendants are, therefore, not entitled to any benefits
16 thereunder pursuant to Government Code section 1092.

17 2. For damages, according to proof, including damages from Cross-defendants in an
18 amount equal to any amounts contributed by Cross-complainant to SDCERS to pay for benefits
19 for Cross-defendants created under MP I.

20 **UPON THE FIFTH CAUSE OF ACTION**

21 1. For a judicial determination that MP II was created in violation of Government
22 Code section 1090 and that Cross-defendants are, therefore, not entitled to any benefits
23 thereunder pursuant to Government Code section 1092.

24 2. For damages, according to proof, including damages from Cross-defendants in an
25 amount equal to any amounts contributed by Cross-complainant to SDCERS to pay for benefits
26 for Cross-defendants created under MP II.

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1 UPON THE SIXTH CAUSE OF ACTION

2 For a judicial declaration that MP I is illegal and void *ab initio*, and that, therefore,
3 Cross-defendants TORRES, WILKINSON, WEBSTER and SAATHOFF receive no benefits and
4 are entitled to receive no benefits under MP I, and Cross-complainant is not required to
5 contribute any money to SDCERS to pay for said benefits, because:

6 a. Its implementation violated and continues to violate Article XVI, Section 17, of
7 the California Constitution, which requires that the Board "shall administer the system in
8 a manner that will assure prompt delivery of benefits to the participants and their
9 beneficiaries; and/or

10 b. Its implementation resulted in a pension deficit in violation of Article XVI,
11 Section 18 of the California Constitution and Charter Section 99, which provide that the
12 City shall not incur any indebtedness or liability in any manner or for any purpose
13 exceeding in any year the income and revenue provided for such year; and/or

14 c. MP I was approved in violation of Government Code section 1090 and San Diego
15 Municipal Code section 27.3560, which prohibit city officers or employees from being
16 financially interested in any contract made by them in their official capacity, or by any
17 body or board of which they are members.

18 UPON THE SEVENTH CAUSE OF ACTION

19 For a judicial declaration that MP II is illegal and void *ab initio*, and that, therefore,
20 Cross-defendants TORRES, WILKINSON, WEBSTER and SAATHOFF receive no benefits and
21 are entitled to receive no benefits under MP I, and Cross-complainant is not required to
22 contribute any money to SDCERS to pay for said benefits, because:

23 a. Its implementation violated and continues to violate Article XVI, Section 17, of
24 the California Constitution, which requires that the Board "shall administer the system in
25 a manner that will assure prompt delivery of benefits to the participants and their
26 beneficiaries; and/or

27 b. Its implementation resulted in a pension deficit in violation of Article XVI,
28 Section 18 of the California Constitution and Charter Section 99, which provide that the

1 City shall not incur any indebtedness or liability in any manner or for any purpose
2 exceeding in any year the income and revenue provided for such year; and/or

3 c. MP II was approved in violation of Government Code section 1090 and San
4 Diego Municipal Code section 27.3560, which prohibit city officers or employees from
5 being financially interested in any contract made by them in their official capacity, or by
6 any body or board of which they are members.

7 **UPON THE EIGHTH CAUSE OF ACTION**

8 For damages according to proof, including but not limited to reimbursement to Cross-
9 complainant for all expenses incurred by Cross-complainant as a result of Cross-defendants'
10 breaches.

11 **UPON THE NINTH CAUSE OF ACTION**

12 For damages according to proof, including but not limited to reimbursement to Cross-
13 complainant for all expenses incurred by Cross-complainant as a result of Cross-defendants'
14 breaches.

15 **UPON ALL CAUSES OF ACTION**

16 1. For Cross-Complainant's costs of suit and any attorneys' fees or costs recoverable
17 by law;

18 2. For other such legal or equitable relief that is necessary to remedy or enforce the
19 causes of action herein.

20 3. For such other relief as the Court may deem proper.

21 Dated: May 3, 2006

MICHAEL J. AGUIRRE, City Attorney

22
23
24 By 

Michael J. Aguirre, City Attorney

25 Attorneys for Defendant and Cross-Complainant
26 CITY OF SAN DIEGO
27
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